

REMARKS

Entry of the foregoing amendments is respectfully requested.

Summary of Amendments

Upon entry the foregoing amendments claims 19-77 are cancelled and claims 78-136 are added, whereby 78-136 will be pending, with claims 78, 79 and 120 being independent claims.

Support for the new claims can be found in the cancelled claims and throughout the present specification (see, e.g., the title of the invention and the Examples).

Applicants point out that the cancellation of claims 19-77 is without prejudice and disclaimer, and Applicants expressly reserve the right to prosecute the cancelled claims in one or more continuation and/or divisional applications.

Summary of Office Action

As an initial matter, Applicants note with appreciation that the Examiner has indicated consideration of the Information Disclosure Statements filed September 15, 2004 and December 1, 2005 by returning signed and initialed copies of the forms PTO-1449 submitted therein.

Applicants also note with appreciation that the Examiner has acknowledged the claim for foreign priority and the receipt of a certified copy of the priority document.

The Election of Species Requirement has been withdrawn and all claims of record are examined on the merits.

Claims 19-39 and 42-77 are provisionally rejected under on the ground of nonstatutory

P24855.A06

obviousness-type double patenting as allegedly being unpatentable over claims 19-32, 35-39 and 42-80 of copending Application No. 10/759,254 in view of Riedel et al., U.S. Patent No. 6,558,680 (hereafter “RIEDEL”).

Claims 19-77 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over RIEDEL in view of Chapin et al., U.S. Patent No. 4,370,319 (hereafter “CHAPIN”).

Response to Office Action

Reconsideration and withdrawal of the rejections of record are respectfully requested in view of the foregoing amendments and the following remarks.

Response to Provisional Rejection of Claims

Claims 19-39 and 42-77 are provisionally rejected under on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 19-32, 35-39 and 42-80 of copending Application No. 10/759,254 in view of RIEDEL.

In order to advance prosecution of the present application to allowance Applicants herewith submit an executed Terminal Disclaimer with respect to copending Application No. 10/759,254, thereby rendering this rejection moot.

As noted above, Applicants submit an executed Terminal Disclaimer to advance prosecution of the application to allowance. This Terminal Disclaimer is being presented without expressing agreement or acquiescence with the rejection of record, and merely is being filed to place the application in condition for allowance.

Authorization is hereby provided to charge any fee necessary for consideration or entry of the Terminal Disclaimer to Deposit Account No. 19-0089.

Response to Rejection of Claims under 35 U.S.C. § 103(a)

Claims 19-77, i.e., all claims under consideration, are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over RIEDEL in view of CHAPIN. The rejection essentially alleges that RIEDEL teaches cosmetic and dermatological compositions containing fatty acids, fatty alcohols, non-polar lipids and ethoxylated fatty acid esters and also teaches or suggests all other elements recited in the rejected claims with the exception of the presence of sodium hydroxide and potassium hydroxide. In this regard, the rejection relies on CHAPIN which allegedly teaches a skin conditioning composition in which an alkaline agent such as sodium hydroxide is used to neutralize the composition.

Applicants respectfully traverse this rejection for several reasons. In particular, it is pointed out that the present independent claims recite that the claimed cosmetic or dermatological compositions are pearlescent. In this regard, the Examiner's attention is directed specifically to the comments in pages 1-3 of the present application, which comments should make it clear that providing a pearlescent composition is not a trivial thing to do. RIEDEL and CHAPIN do not appear to mention pearlescent compositions, let alone teach how pearlescent compositions (and in particular, pearlescent compositions which show good skin compatibility) can be obtained. For this reason alone, the cited documents are unable to render obvious the claimed compositions.

Applicants also emphasize that the mere fact that RIEDEL mentions "polymers" as one of many examples of optional ingredients, auxiliaries and additives which find use in cosmetic compositions clearly does not amount to a motivation for one of ordinary skill in the art to incorporate specific classes of polymers which are not conventionally employed in cosmetic or dermatological compositions, i.e., amphiphilic polymers, associatives polymers and/or siloxane elastomers into the compositions of RIEDEL.

It is submitted that the term “polymers” encompasses hundreds, if not thousands, of different types of polymeric substances. If one were to adopt, *arguendo*, the position taken by the Examiner, incorporating any member of this huge group of polymeric substances into the compositions of RIEDEL would be obvious to one of ordinary skill in the art for the sole reason that RIEDEL mentions in passing and without providing any details regarding types, concentrations, etc., that “polymers” may optionally be present in the compositions disclosed therein.

In this regard, it needs to be taken into account that the three specific types of polymers which are recited in the present claims, i.e., amphiphilic polymers, associative polymers and siloxane elastomers do not represent polymers which are conventionally and routinely employed in cosmetic or dermatological compositions (e.g., as thickeners or rheology modifiers). Applicants point out that the Examiner has not cited a single document which discloses the incorporation an amphiphilic polymer, an associative polymer and/or a siloxane elastomer into a cosmetic composition of a type which is similar to the type of composition which is recited in the present claims (regardless of whether the composition is pearlescent or non-pearlescent).

Applicants further point out that present claims 119 and 120 recite that the claimed composition is substantially free of mono- and di-fatty acid esters of glycerol and glycol. In contrast, according to, e.g., the abstract of RIEDEL the compositions disclosed therein contain 0.2-10 % by weight of fatty acid mono- and/or diglycerides. Also, the compositions of the eleven Examples of RIEDEL without exception contain glyceryl stearate in a concentration of at least 2.00 % by weight, thereby even teaching away from the subject matter of claims 119 and 120 (and the claims dependent therefrom). Accordingly, RIEDEL not only fails to teach or suggest compositions which are substantially free of mono- and di-fatty acid esters of glycerol and glycol but even teaches away from such compositions.

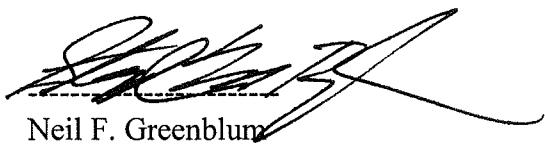
Applicants note that according to the second paragraph of page 6 of the present Office Action the Examiner takes the position that the term “substantially free” is considered as a broad term and interprets this term to mean in the range of 0.2-10 % by weight. In this regard, it is submitted that the Examiner has not provided any basis for this broad interpretation of the term “substantially free” in either the present specification itself or in any other document. Clearly, one of ordinary skill in the art would not consider a cosmetic or dermatological composition which comprises 0.2 % of a specific component to be “substantially free” of this component. In other words, 0.2 % by weight is a significant and non-negligible concentration. Otherwise the inventors of RIEDEL would not have chosen this concentration as the lower value of a concentration range for a component whose presence in the compositions disclosed therein they apparently considered to be critical (see, e.g., claim 1).

It is submitted that for at least all of the foregoing reasons, the Examiner has failed to meet the initial burden of establishing a *prima facie* case of obviousness of the claimed subject matter. In view thereof, the rejection under 35 U.S.C. § 103(a) over RIEDEL in view of CHAPIN is without merit, wherefore withdrawal of this rejection is respectfully requested.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,
Silke KOHLHASE et al.



Neil F. Greenblum
Reg. No. 28,394

January 10, 2008
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191

Stephen M. Roylance
Reg. No. 31,296